

TEXAS RACING COMMISSION
MEETING

10:36 a.m.
Wednesday,
March 24, 2021

VIA GOTOMEETING

COMMISSIONERS:

JOHN T. STEEN III, Chair
RONALD F. EDERER, Vice-Chair
TIM KLEINSCHMIDT
CONNIE McNABB, D.V.M. (absent)
STEVEN P. MACH
MARGARET MARTIN
MICHAEL "MIKE" MOORE
ROBERT C. PATE
ARVEL "A.J." WAIGHT, JR.

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P R O C E E D I N G S

CHAIRMAN STEEN: Good morning. At this time, I would like to call today's meeting of the Texas Racing Commission to order. The time is 10:36 a.m.

Before we begin, I want to remind everyone that it will be extremely important to keep your device on mute, until you are called upon. And put your device back on mute afterwards.

If you have not previously submitted your intention to comment on this agenda item, you will need to immediately send an email to info@TXRC.texas.gov. Again, that is info@TXRC.texas.gov to request to comment.

Robert, would you please call the roll.

MR. ELROD: Chairman Steen.

CHAIRMAN STEEN: Present.

MR. ELROD: Commissioner Ederer.

(No response.)

MR. ELROD: Mr. Ederer.

COMMISSIONER EDERER: Present.

MR. ELROD: Commissioner Martin.

COMMISSIONER MARTIN: Present.

MR. ELROD: Commissioner McNabb.

(No response.)

MR. ELROD: Commissioner McNabb.

(No response.)

1 MR. ELROD: Commissioner Moore.

2 COMMISSIONER MOORE: Present.

3 MR. ELROD: Commissioner Pate.

4 COMMISSIONER PATE: Present.

5 MR. ELROD: Commissioner Waight.

6 COMMISSIONER WAIGHT: Present.

7 MR. ELROD: Commissioner Kleinschmidt.

8 COMMISSIONER KLEINSCHMIDT: Here.

9 MR. ELROD: Commissioner Mach.

10 COMMISSIONER MACH: Present.

11 CHAIRMAN STEEN: Robert, do we have a quorum?

12 MR. ELROD: Yes, sir. We do.

13 CHAIRMAN STEEN: Great. Thank you. We will
14 move to Item 2, Discussion and possible action to direct
15 staff regarding disbursement of purse funds from the Horse
16 Industry Escrow Account.

17 Devon Bijansky, will you please present the
18 item.

19 MS. BIJANSKY: Yes, sir. Mr. Chairman and
20 Commissioners, as I am sure you recall, at your least
21 meeting earlier this month, Lone Star Park raised
22 objections to the idea of signing a contract to govern the
23 use of purse funds from the Horse Industry Escrow
24 Account. The Horse Industry Escrow Account Committee met
25 last week to consider this issue.

1 For some background, the Agency's primary
2 concern is ensuring accountability for these funds, now
3 that \$17.5 million a year in public dollars are flowing
4 through this account for purses. We have discussed this
5 at various times over the last year in the context of the
6 breed registry portion for events, to further the horse
7 industry. And the same principle applies to the purse
8 portion of the funds.

9 So, I had taken the contract that we use with
10 the breed registries and modified it for use with the
11 tracks. And also added the Texas Horsemen's Partnership
12 as an additional party, because the THP is the entity that
13 actually holds and disburses the funds.

14 So, the Committee met, considered the issue,
15 and is recommending that the full Commission direct staff
16 to distribute the funds in accordance with the industry
17 agreement that was approved in December, with staff
18 working on addressing the Constitutional concerns about
19 accountability through rule that will most likely come
20 before you at the May meeting.

21 I am happy to answer any questions you may
22 have. And Commissioners Kleinschmidt or Pate may also
23 want to add something.

24 CHAIRMAN STEEN: Thank you, Devon.
25 Commissioners Kleinschmidt and Pate, would you care to

1 comment at this time? If not, we will see if there is any
2 public comment?

3 COMMISSIONER KLEINSCHMIDT: Yes. This is
4 Kleinschmidt. We did listen to the concerns of industry
5 and had a fairly robust discussion on whether to move
6 forward with the control of the purse funds.

7 You know, everything from reporting to audit to
8 retention of records, whether that would be controlled by
9 a contract that the tracks and the Horsemen's Partnership,
10 anybody touching the purse funds would enter into with the
11 Racing Commission to control use of those funds, and the
12 reporting related to the use of those funds.

13 As you can -- and some of you may not have seen
14 those types of contracts before. They can be fairly
15 involved and intricate, but suffice it to say that they
16 deal with everything from, here is what we did with
17 them. We know we are subject to audit. Here is how we
18 are going to report. Recognize we have got to retain
19 these records for a certain period of time.

20 They can be fairly involved. And we had a good
21 discussion with the industry representatives and their
22 attorneys around that. And suffice it to say that
23 Commissioner Pate and my recommendation ended up being an
24 industry espoused, meaning the tracks, the Horsemen, et
25 cetera, and the fund, the Horsemen's Partnership Fund,

1 those folks, expressed the decided preference for not
2 entering into a contract to control the disposition, use,
3 receipt of those funds, and the reporting, but to allow
4 that process to be controlled by, of course, existing
5 statute, but by Agency rules in lieu of the contract.

6 And our Committee recommendation would be to
7 support that preference of the tracks and the industry, to
8 move forward with the control of the reporting of those
9 funds by rule rather than by contract. I would like just
10 a little background to remind everyone that what we are
11 dealing with here is historically -- if you look at those
12 purse funds that were dealt with, they probably
13 historically originated as industry funds.

14 I think there was roughly \$700,000 per year for
15 some time period that probably went into those purse
16 funds. And those were industry generated funds.

17 And then starting in the last couple of years,
18 the horse industry purse and event funds statutorily was
19 created. It changed that fund from being industry funds,
20 to receiving approximately \$17 million a year in
21 additional purse funds that could be distributed to the
22 tracks.

23 So while, historically, dealing with any type
24 of a process there would have been dealing with industry
25 funds, now we are dealing with public funds. Those are

1 tax monies that are being added to that.

2 So, I really want everyone to understand
3 clearly that while we had hysterically -- yes, probably
4 hysterically, too. But historically, with industry funds,
5 we are now dealing with public funds that have to be
6 controlled and reported on along those lines, according to
7 our Constitutional requirements.

8 And again, the industry stated a preference for
9 moving forward with control of the use and reporting of
10 those funds by rule rather than contract. And that would
11 be the recommendation of our Fund Committee, that we
12 cooperate with that preference.

13 And certainly, Commissioner Pate, if you have
14 got anything to add to that. Or if you all want to
15 discuss that for a fashion, well, I am open for any
16 questions you might have.

17 COMMISSIONER PATE: Commissioner Steen, Chair
18 Steen, I really don't have anything else to add. We did
19 have a chance. Mr. Babbitt -- I'm sorry, Mr. Bennett, who
20 is on this line here, was one of the attorneys, and he
21 pointed out a number of the rules that already exist.

22 We noticed how they had to be modified. And we
23 are going to have to go through this rulemaking anyway,
24 and it just seemed to be the better way to do it. And so,
25 that is the recommendation of the Committee.

1 I will say that the development of the rules
2 themselves is going to be a time-intensive project for
3 Devon and other staff at the TRC, because the rules may --
4 there may be kind of a permutation of changes that need to
5 occur to account for the various reporting and just the
6 control of the money as currently written. But anyway, we
7 are going to work through that.

8 COMMISSIONER KLEINSCHMIDT: I would also like
9 to sort of lay out the near future, where -- just so that
10 the Commission is well informed. We are -- of course, the
11 Commission is currently under Sunset.

12 And the Sunset Bill related to the Racing
13 Commission, Devon, if I am understanding correctly, would
14 transfer September 1. Of course, if that bill passes,
15 would September 1 transfer control of the horse industry,
16 event and purse funds -- would transfer control of that
17 fund to the Comptroller, if I am remembering correctly,
18 under that Sunset Bill.

19 MS. BIJANSKY: Correct.

20 COMMISSIONER KLEINSCHMIDT: So, am I correct
21 there?

22 MS. BIJANSKY: Yes, sir.

23 COMMISSIONER KLEINSCHMIDT: Okay. All right,
24 we are sort of in that transition process here, in that
25 whatever we do in the way of proposals to control

1 reporting, audit, record retention, the fund use process,
2 whatever we do may get a second look by the Comptroller
3 after September 1.

4 There is -- I believe there is some value in
5 proceeding to develop and propose these rules. At the
6 very least, we will have created a format or an outline
7 for the Comptroller that I think would be of some value.

8 It's not just real clear from the Sunset Bill
9 just exactly how independent the [audio skip] is going to
10 be. And I am sort of expecting that the Comptroller is
11 still going to expect a lot of input from the Racing
12 Commission and our committees on where we want to head in
13 the form of rules and control, and things to that nature.

14 So, I think if we default forward to the
15 Comptroller taking care of this issue, it could be easily
16 a couple of years before the process is developed. So, I
17 think we should -- as a Commission, in our committees, and
18 the staff, I think we should proceed to work on the
19 development of the rules that would control these purse
20 funds.

21 COMMISSIONER MACH: I would just further add
22 that we need to proceed as if there aren't going to be any
23 legislative changes, and this Commission will continue as
24 business as usual.

25 CHAIRMAN STEEN: Okay. Robert, is there anyone

1 signed up to speak on this item?

2 MR. ELROD: No, sir. But Marsha Rountree and
3 Bruce Bennett are both available if you all have any
4 questions.

5 CHAIRMAN STEEN: Thank you.

6 COMMISSIONER KLEINSCHMIDT: This is
7 Kleinschmidt again. I do feel like there would be some
8 value in making it clear that -- or potentially directing
9 the Racing Commission staff.

10 We need to give them some clarity, as far as
11 the allocation of these future funds, the purse funds.
12 Because they are put in a unique position of being
13 requested to allocate the funds without a new set of rules
14 in place, and without a contract in place.

15 And so I think the only logical approach for us
16 to take right at this time would be to direct the staff to
17 allocate the purse funds according to what we have
18 historically done in the past. But I do think we need to
19 give them direction along those lines, as well as I think
20 that should be a Commission decision.

21 Because you know, from a staff standpoint, to
22 have to take the responsibility of moving forward with the
23 allocation of these funds without some direction from the
24 Commission I think puts them in some at least perceived
25 jeopardy. Because they don't -- currently, there is not a

1 contract to control the disposition of these funds.

2 And obviously, we haven't had a chance to
3 develop any new rules that would apply to the disbursal of
4 these funds. And so, I think, as far as clarification
5 from a staff standpoint, we need to direct them as to how
6 to move forward with the disbursal of the purse funds.

7 COMMISSIONER PATE: Well, Commissioner
8 Kleinschmidt, I want to remind you. Back in December, we
9 approved the allocation of funds between the various
10 tracks. That has already been --

11 COMMISSIONER KLEINSCHMIDT: Okay.

12 COMMISSIONER PATE: -- allowed under the
13 statute. The various interested parties came to an
14 agreement which is allowed under the statute. And we
15 already have that allocation.

16 And then, we even went further than that. We
17 were sensitive to the request of the tracks can front load
18 certain payments to some tracks, as opposed to others,
19 because of timing.

20 COMMISSIONER KLEINSCHMIDT: Right.

21 COMMISSIONER PATE: So, I think all of that is
22 in place. And I would just remind the Commissioners also
23 that we disbursed the \$17 million last year in accordance
24 with the agreement.

25 And I think that was one of the observations,

1 or perhaps even one of the complaints of the industry,
2 that we didn't go through this process last year. There
3 are a number of reasons why we didn't have time to do it
4 last year.

5 But in any event, it needs to be done now. But
6 I think the funds can be handled safely, based upon the
7 safeguards that are already in place, with respect to the
8 Texas Horsemen's Partnership and the tracks.

9 There is an essential tension there that is
10 watching over these monies. There is the people that win
11 the money. There is people that award the money. And
12 there is people that are expecting to be paid, and so they
13 are all looking at these funds, and agreeing on them.

14 So, again, our recommendation would be that we
15 go ahead and allow the staff to disburse as we agreed they
16 could back in December. And then, move forward with the
17 rulemaking on how we are going to do it in the future.

18 COMMISSIONER EDERER: Let me interject here.
19 This is Ron Ederer. I believe that disbursement of the
20 funds as approved in December is the proper way to
21 proceed. And I think that we need to go ahead and proceed
22 as soon as possible with that.

23 As far as the concern that I know Devon has, as
24 to where the money is going, the accountability of the
25 money. Because of the -- all parties, I am not really

1 concerned about any of the money disappearing.

2 All we need to do is to be able to know where
3 it went, where it is going to go, and give some
4 guidance. I believe, and I think it is extremely
5 important that we have all of our rules in place before
6 September 1st.

7 In my opinion, when the Comptroller takes over,
8 they are not going to have any idea of what they are
9 doing. They are not going to understand the industry.

10 And I think it is very important and incumbent
11 upon us to give them direction. And the way we can do
12 that is to have our rules in place. I think that is very
13 important.

14 So, my proposal at this time would be to direct
15 the staff to disburse as set out and previously
16 approved. And that then, we set up a -- we can have a
17 Rule meeting. And we need to do that before too long.

18 And at the Rule meeting, I would want three
19 different proposals. I would want a proposal out of the
20 staff, Devon. And I would want a proposal from the
21 tracks, John and Bennett. And I would like to have a
22 proposal from the Partnership.

23 And we can discuss those proposals, get these
24 rules in place. And then come September 1, it would be a
25 much smoother transition. But I think it is very

1 important that we do this, and move forward now, and not
2 wait, I have to say.

3 CHAIRMAN STEEN: Thanks, Vice Chair Ederer. Do
4 we have any further discussion on the item?

5 (No response.)

6 CHAIRMAN STEEN: If not, I will entertain a
7 motion to direct staff to disburse purse funds from the
8 HIEA account, in accordance with the industry agreement
9 approved at the December meeting. And of course, we will
10 proceed with the rulemaking, as well, as Vice Chair Ederer
11 laid out.

12 COMMISSIONER MACH: This is Mach. I will make
13 that motion.

14 CHAIRMAN STEEN: Motion made by Commissioner
15 Mach.

16 COMMISSIONER PATE: Second.

17 CHAIRMAN STEEN: I'm sorry. Who was the
18 second?

19 COMMISSIONER PATE: Pate.

20 CHAIRMAN STEEN: Commissioner Pate. Do we have
21 any further discussion?

22 (No response.)

23 CHAIRMAN STEEN: Okay. We will take this up
24 for a vote. All those in favor, please signify by saying
25 aye.

1 (A chorus of ayes.)

2 CHAIRMAN STEEN: Any opposed?

3 (No response.)

4 CHAIRMAN STEEN: The motion carries.

5 There will be no Executive Session today. Our
6 next meeting is scheduled for Tuesday, May 18th.

7 With no further business, the time is now
8 10:54. We are adjourned. Thank you, everybody.

9 (Whereupon, at 10:54 a.m., the meeting was
10 concluded.)

C E R T I F I C A T E

MEETING OF: Texas Racing Commission

LOCATION: via GoToMeeting

DATE: March 24, 2021

I do hereby certify that the foregoing pages,
numbers 1 through 17, inclusive, are the true, accurate,
and complete transcript prepared from the verbal recording
made by electronic recording by Elizabeth Stoddard before
the Texas Racing Commission.

DATE: March 31, 2021

/s/ Carol Bourgeois
(Transcriber)

On the Record Reporting
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